

CAPTIVE INSURANCE COMPANIES

CHAPTER 1050

H.B. No. 1944

AN ACT

relating to captive insurance companies.

Be it enacted by the Legislature of the State of Texas:

ARTICLE 1. REGULATION OF CAPTIVE INSURANCE COMPANIES

SECTION 1.01. Section 964.001(a), Insurance Code, is amended by adding Subdivisions (1-a), (1-b), and (8) and amending Subdivision (2) to read as follows:

(1-a) "Attorney in fact" means a firm or corporation that, under a power of attorney or other appropriate authorization of the attorney in fact, acts for subscribers of a captive exchange by issuing reciprocal or interinsurance contracts.

(1-b) "Captive exchange" means a reciprocal or interinsurance exchange formed under this chapter. The term includes the attorney in fact through which a reciprocal or interinsurance contract, as defined by Section 942.001, is exchanged.

(2) "Captive insurance company" means a company that holds a certificate of authority under this chapter to insure the operational risks of the company's affiliates or risks of a controlled unaffiliated business. The term includes a captive exchange.

(8) "Subscriber" means an affiliated company or controlled unaffiliated business that enters into a reciprocal contract of insurance with an attorney in fact as a subscriber of a captive exchange.

SECTION 1.02. Section 964.051(b), Insurance Code, is amended to read as follows:

(b) A captive insurance company may not issue:

(1) life insurance, except to insure employee benefits that are subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

(2) annuities;

(3) accident and health insurance for the company's parent and affiliates, except to insure employee benefits that are subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

(4) title insurance;

(5) mortgage guaranty insurance;

(6) financial guaranty insurance;

(7) residential property insurance;

(8) personal automobile insurance; or

(9) workers' compensation insurance.

SECTION 1.03. Section 964.052, Insurance Code, is amended by adding Subsection (f) to read as follows:

(f) A captive insurance company may cede risks to or take credit for reserves on risks ceded to a nonaffiliated reinsurer if the reinsurer:

(1) holds a certificate of authority to transact insurance or reinsurance in a jurisdiction that is:

(A) on the list of qualified jurisdictions of the National Association of Insurance Commissioners; and

(B) acceptable to the commissioner;

(2) maintains minimum capital and surplus, or the equivalent, of \$250 million as of the end of the preceding year; and

(3) maintains a financial strength rating of B+ or its equivalent from a national or international rating agency that:

- (A) *has registered with the Securities and Exchange Commission;*
- (B) *is designated as a nationally recognized statistical rating organization;*
- (C) *is on the list of Credit Rating Providers by the Securities Valuation Office of the National Association of Insurance Commissioners; and*
- (D) *is acceptable to the commissioner.*

SECTION 1.04. Sections 964.053(a), (c), (d), and (e), Insurance Code, are amended to read as follows:

(a) A captive insurance company, *other than a captive exchange, or an attorney in fact* must be formed for the purpose of engaging in the business of insurance under this chapter *by filing an appropriate application with the secretary of state.*

(c) The certificate of formation of a captive insurance company, *other than a captive exchange, or an attorney in fact must comply with the applicable requirements of the Business Organizations Code. The [must include:*

~~[(1) the] name of the company or attorney in fact in the certificate of formation may include the words "insurance," "company," or similar words indicating that the purpose of the company or attorney in fact is to operate as an insurance company or attorney in fact under this chapter [; which may not be the same as, deceptively similar to, or likely to be confused with or mistaken for any other existing business name registered in this state;~~

~~[(2) the location of the company's principal business office;~~

~~[(3) the type of insurance business in which the company proposes to engage;~~

~~[(4) the number of directors or members of the governing body of the company;~~

~~[(5) the number of authorized shares and the par value of the company's capital stock for a captive insurance company formed as a corporation;~~

~~[(6) the amount of the company's initial capital and surplus; and~~

~~[(7) any other information required by the commissioner as necessary to explain the company's objectives, management, and control].~~

(d) The board of directors or governing body of a captive insurance company formed in this state must have at least three members, and at least one of the members must be a resident of this state. *If the captive insurance company is a captive exchange, the principal office of the attorney in fact must be in this state.*

(e) The certificate of formation, ~~or~~ bylaws, *or governing document* of a captive insurance company must authorize a quorum of the board of directors or governing body to consist of not fewer than one-third of the fixed number of directors or members of the governing body.

SECTION 1.05. Section 964.055(a), Insurance Code, is amended to read as follows:

(a) An entity may not engage in business as a captive insurance company domiciled in this state unless it holds a certificate of authority issued by the department to act as a captive insurance company. A captive insurance company, when permitted by its certificate of formation *or governing document*, may apply for a certificate of authority under this chapter.

SECTION 1.06. Section 964.056, Insurance Code, is amended to read as follows:

Sec. 964.056. CAPITAL AND SURPLUS OR EQUIVALENT REQUIREMENTS.

(a) The department may not issue a certificate of authority to a captive insurance company unless the company possesses and maintains unencumbered capital and surplus, *or the equivalent*, in an amount determined by the commissioner after considering:

(1) the amount of premium written by the captive insurance company;

(2) the characteristics of the assets held by the captive insurance company;

(3) the terms of reinsurance arrangements entered into by the captive insurance company;

- (4) the type of business covered in policies issued by the captive insurance company;
 - (5) the underwriting practices and procedures of the captive insurance company; and
 - (6) any other criteria that has an impact on the operations of the captive insurance company determined to be significant by the commissioner.
- (b) The amount of capital and surplus, *or the equivalent*, determined by the commissioner under Subsection (a) may not be less than \$250,000.
- (c) The capital and surplus, *or the equivalent*, required by Subsection (a) must be in the form of:
- (1) United States currency;
 - (2) an irrevocable letter of credit, in a form approved by the commissioner and not secured by a guarantee from an affiliate, naming the commissioner as beneficiary for the security of the captive insurance company's policyholders and issued by a bank approved by the commissioner;
 - (3) bonds of this state *or a county or municipality of this state*; or
 - (4) bonds or other evidences of indebtedness of the United States, the principal and interest of which are guaranteed by the United States.

SECTION 1.07. Section 964.057(a), Insurance Code, is amended to read as follows:

(a) *After forming* ~~[To obtain a certificate of authority for]~~ a captive insurance company, *other than a captive exchange, or an attorney in fact*, the incorporators or organizers must pay to the commissioner an application fee and file with the commissioner an application for a ~~[the]~~ certificate of authority for a captive insurance company, which must include:

- (1) a financial statement certified by two principal officers;
- (2) a plan of operation and projections, which must include an actuarial report prepared by a qualified independent actuary;
- (3) the captive insurance company's certificate of formation *or other documentation demonstrating the valid formation of the captive insurance company, other than a captive exchange, or the attorney in fact*;
- (4) an affidavit by the incorporators, organizers, or officers of the captive insurance company stating that:
 - (A) the capital and surplus, *or the equivalent*, are the bona fide property of the company; and
 - (B) the certificate of formation *or other documentation demonstrating the captive insurance company's or attorney in fact's valid formation* is true and correct; and
- (5) if the application provides for the issuance of shares of stock or other type of equity instrument without par value, a certificate authenticated by the incorporators or officers stating:
 - (A) the number of shares or other type of equity instrument without par value that are subscribed; and
 - (B) the actual consideration received by the captive insurance company for those shares or other type of equity instrument.

SECTION 1.08. Section 964.058(a), Insurance Code, is amended to read as follows:

(a) After the application and application fee for a certificate of authority under Section 964.057 are filed with the department and the applicant has complied with all legal requirements, the commissioner shall conduct an examination of the applicant to determine whether:

- (1) the minimum capital and surplus, *or the equivalent*, requirements of Section 964.056 are satisfied;
- (2) the capital and surplus, *or the equivalent*, are the bona fide property of the applicant; and

(3) the applicant has fully complied with applicable insurance laws.

SECTION 1.09. Sections 964.059(a) and (d), Insurance Code, are amended to read as follows:

(a) The commissioner shall determine whether:

(1) the capital *and surplus, or the equivalent*, ~~[structure]~~ of the applicant *meet* ~~[meets]~~ the requirements of this chapter;

(2) the officers or *members* ~~[directors]~~ of the *applicant's governing body* ~~[applicant]~~ have sufficient insurance experience, ability, standing, and good record to make success of the captive insurance company probable;

(3) the applicant is acting in good faith; and

(4) the applicant otherwise satisfies the requirements of this chapter.

(d) If the commissioner does not deny the application under Subsection (c), the commissioner shall approve the application and:

(1) issue to the applicant a certificate of authority to engage in business as provided for in the applicant's certificate of formation *or other governing document*;

(2) certify and file the approved document with the department; and

(3) issue a certified copy of the certificate of authority to the applicant's incorporators or officers.

SECTION 1.10. Section 964.060, Insurance Code, is amended by adding Subsection (d) to read as follows:

(d) The commissioner may waive the requirement for a captive insurance company to file an actuarial report with the company's annual report if the commissioner determines that the company:

(1) has less than \$1 million of net written premium or reinsurance assumed; or

(2) has been in operation for less than six months as of the end of the previous calendar year.

SECTION 1.11. Section 964.061(b), Insurance Code, is amended to read as follows:

(b) A captive insurance company may make loans to its affiliates with the prior approval of the commissioner. Each loan must be evidenced by a note approved by the commissioner. A captive insurance company may not make a loan of the minimum capital and surplus funds, *or the equivalent*, required by this chapter.

SECTION 1.12. Section 964.062, Insurance Code, is amended to read as follows:

Sec. 964.062. **AMENDMENTS TO CERTIFICATE OF FORMATION OR GOVERNING DOCUMENT.** A captive insurance company may not amend its certificate of formation *or other governing document* unless the amendment has been filed with and approved by the commissioner.

SECTION 1.13. The heading to Section 964.063, Insurance Code, is amended to read as follows:

Sec. 964.063. **DIVIDENDS AND DISTRIBUTIONS.**

SECTION 1.14. Section 964.063(a), Insurance Code, is amended to read as follows:

(a) A captive insurance company shall notify the commissioner in writing when issuing policyholder dividends *or distributions to policyholders*.

SECTION 1.15. Section 964.065, Insurance Code, is amended to read as follows:

Sec. 964.065. **SUSPENSION OR REVOCATION OF CERTIFICATE OF AUTHORITY.** The commissioner, after notice and an opportunity for hearing, may revoke or suspend the certificate of authority of a captive insurance company for:

(1) insolvency or impairment of required capital or surplus, *or the equivalent*, to policyholders;

(2) failure to submit an annual report, as required by Section 964.060;

- (3) failure to comply with the provisions of its own charter, [or] bylaws, rules, or other governing document;
- (4) failure to submit to examination, as required by Chapter 401;
- (5) failure to pay the cost of examination, as required by Chapter 401;
- (6) failure to pay any tax or fee required by this code;
- (7) removal of its principal office or books and records from this state without prior approval of the commissioner;
- (8) use of practices that render its operation detrimental to the public or its condition unsound; or
- (9) failure to otherwise comply with the laws of this state.

SECTION 1.16. Section 964.070, Insurance Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Any information filed *with the commissioner* by an applicant or captive insurance company under this chapter is confidential and privileged for all purposes, including for purposes of Chapter 552, Government Code, a response to a subpoena, or evidence in a civil action. Except as provided by Subsections (b) and (c), the information may not be disclosed without the prior written consent of the applicant or captive insurance company to which the information pertains.

(d) *The secretary of state may index in the public record any document filed with the secretary by an applicant or captive insurance company.*

SECTION 1.17. Subchapter B, Chapter 964, Insurance Code, is amended by adding Section 964.073 to read as follows:

Sec. 964.073. ADJUSTER LICENSE NOT REQUIRED; EXCEPTION. (a) Except as provided by Subsection (b), a captive insurance company is not required to use a person licensed as an adjuster under Chapter 4101 to adjust losses.

(b) A captive insurance company shall use a person licensed as an adjuster under Chapter 4101 to adjust a claim that a person that is not an affiliated company or an insured controlled unaffiliated business makes against an affiliated company insured by the captive insurance company.

ARTICLE 2. CAPTIVE EXCHANGES

SECTION 2.01. Chapter 964, Insurance Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. CAPTIVE EXCHANGES

Sec. 964.101. APPLICABILITY OF OTHER LAW. (a) A captive exchange is subject to:

- (1) this chapter; and*
- (2) Sections 942.051, 942.053, and 942.054.*

(b) To the extent of a conflict, this chapter controls over other law applicable to a captive exchange under this section.

Sec. 964.102. STATUS OF CAPTIVE EXCHANGES. A captive exchange is formed as an exchange as provided by this subchapter and, except as provided by this subchapter, shall operate as a captive insurance company as provided by this chapter.

Sec. 964.103. SUBSCRIBER REQUIREMENTS. On and after the date of the captive exchange's formation, each subscriber of the captive exchange must:

- (1) have an existing affiliation with each other subscriber; or*
- (2) satisfy the definition of a controlled unaffiliated business regardless of any affiliation relationship created by the captive exchange.*

Sec. 964.104. ATTORNEY IN FACT REQUIREMENTS. The attorney in fact of a captive exchange must:

(1) be:

(A) a corporation organized in this state; or

(B) a limited liability company organized in this state;

(2) on the date of the captive exchange's formation, have and maintain a power of attorney with all subscribers of the captive exchange;

(3) have its principal office in this state; and

(4) have at least three members in the governing body of the attorney in fact, and at least one of those members must be a resident of this state.

Sec. 964.105. ATTORNEY IN FACT POWERS AND DUTIES. (a) The attorney in fact of a captive exchange shall:

(1) supervise the finances of the captive exchange;

(2) supervise the captive exchange's operations to ensure the captive exchange's conformity with the captive exchange's subscriber declaration and power of attorney; and

(3) obtain, as necessary, an audit of the account and records of the attorney in fact at the expense of the captive exchange.

(b) The attorney in fact of a captive exchange has any additional powers and duties conferred by the captive exchange's subscriber declaration and power of attorney.

Sec. 964.106. SUBSCRIBER DECLARATION. A captive exchange shall file with the department a subscriber declaration that includes:

(1) the information described by Section 942.053;

(2) the amount of the captive exchange's initial surplus; and

(3) a provision to authorize a quorum of the governing body of the captive exchange's attorney in fact to consist of not fewer than one-third of the fixed number of members of the governing body.

ARTICLE 3. TRANSITION AND EFFECTIVE DATE

SECTION 3.01. The change in law made by this Act to Section 964.070, Insurance Code, applies only to information filed with the secretary of state on or after September 1, 2017. Information filed with the secretary of state before September 1, 2017, is governed by the law applicable to the information immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3.02. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

Passed by the House on May 5, 2017: Yeas 147, Nays 0, 1 present, not voting; passed by the Senate on May 23, 2017: Yeas 31, Nays 0.

Approved June 15, 2017.

Effective June 15, 2017.

ADMINISTRATION AND OPERATION OF CERTAIN TRUSTS CREATED TO PROVIDE FOR THE GENERAL CARE AND MAINTENANCE OF PERPETUAL CARE CEMETERIES

CHAPTER 1051

H.B. No. 1948

AN ACT